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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 JOHN LOFTON, an individual, on his own
14 behalf and on behalf of all others similarly
situated,

15 Plaintiff,

16 v.

17 VERIZON WIRELESS (VAW) LLC, and
18 DOES 1-100, inclusive,

19 Defendants.

No. C 13-05665 YGR

**~~[PROPOSED]~~ ORDER GRANTING
ATTORNEY'S FEES AND AN INCENTIVE
AWARD TO THE CLASS
REPRESENTATIVE**

AS MODIFIED BY THE COURT

1 Plaintiff John Lofton's ("Lofton") Motion for Attorney's Fee Award and Class
2 Representative's Incentive Award ("Motion") was heard by this Court at the Final Approval
3 Hearing on May 24, 2016, before the Honorable Yvonne Gonzalez Rogers. All Parties appeared
4 through their counsel of record. Defendant Verizon Wireless (VAW) LLC ("Verizon") does not
5 oppose the Motion.

6 Based on the Motion and supporting Memorandum of Points and Authorities and the
7 declarations in support thereof, the Parties' Stipulation and Settlement Agreement ("Settlement
8 Agreement"), and the arguments of counsel at the hearing on the Motion, and with good cause
9 appearing, the Court rules as follows:

10 1. The capitalized terms used in this Order have the same meaning as defined in the
11 Settlement Agreement, which is attached hereto as Exhibit 1.

12 2. This Court, having considered Class Counsel's request for an award of attorneys'
13 fees and reimbursement of expenses, hereby grants the request and awards Class Counsel
14 attorneys' fees and reimbursement of expenses in the total amount of \$1.2 million. This amount
15 was reasonable under a common fund analysis in light of the circumstances of this case. Such
16 amounts are to be paid to Class Counsel by the Settlement Administrator Class Counsel out of
17 the Common Fund within ten (10) days of the later of (i) the Effective Date; or (ii) the date on
18 which the Plan of Allocation becomes Final, as defined in the Plan of Allocation, which is
19 attached hereto as Exhibit 2.

20 3. The award of attorneys' fees to Class Counsel shall be allocated among Class
21 Counsel in a fashion that, in the opinion of Class Counsel, fairly compensates Plaintiff's counsel
22 for their respective contributions in the prosecution of this action. The Court has considered this
23 award of attorneys' fees and reimbursement of expenses separately from the merits of the
24 settlement and the Court has considered and finds as follows:

25 a. Class Counsel have conducted the litigation and achieved the Settlement
26 with skill, perseverance, and diligent advocacy on behalf of Lofton and the Settlement Class as a
27 whole.

1 b. The Action involves a myriad of factual and legal issues and, in the
2 absence of Settlement, would involve further lengthy proceedings and uncertain resolution of
3 such issues.

4 c. Had Settlement not been achieved, there would remain a significant risk
5 that the Settlement Class may have recovered less or nothing from Verizon, and that any
6 recovery would have been significantly delayed.

7 d. The amount of attorneys' fees and reimbursable expenses awarded to
8 Class Counsel is fair and reasonable, given the number of attorney hours expended to achieve the
9 Settlement on behalf of Lofton and the Settlement Class as a whole, and the estimated value of
10 the settlement benefits obtained for the Settlement Class, and the amount awarded is consistent
11 with awards for similar work in similar cases.


12 4. Having considered all the circumstances presented in the Motion for Attorney's
13 Fee Award and Class Representative's Incentive Award, the Court specifically finds that it is
14 appropriate to exceed the benchmark award of 25 percent because of the substantial results
15 achieved (a \$4 million common fund); the risks of class litigation against an able defendant well
16 able to defend itself vigorously (as evidenced by the five motions Verizon brought to dismiss all
17 or part of Lofton's case), as well as the significant risks posed by Collecto's concealment of its
18 dialers' call logs and/or call detail reports; the skill and effort expended by Class Counsel in
19 opposing Verizon's motion practice and detecting and obtaining a judicial determination of
20 Collecto's discovery misconduct; the fact that Class Counsel litigated this case for four years
21 entirely on a contingency fee basis, advancing tens of thousands of dollars doing so; and Class
22 Counsel's significant lodestar, which exceeds the fee award requested, and which the Court
23 finds, in general, reasonably necessary given both Verizon's motion practice and Collecto's
24 conduct in discovery. That said, the Court does not award the full amount requested as Class
25 Counsel's own conduct contributed, in part, to the overly litigious nature of this Action.

26 5. This Court, having considered Plaintiff's request for an incentive fee, hereby
27 grants the request and awards Lofton an incentive fee of \$15,000. Such incentive fee shall be
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1 paid by the Settlement Administrator to Lofton out of the Common Fund within ten (10) days of
2 the later of (1) the Effective Date and (2) the date on which the Plan of Allocation becomes
3 Final, as defined in the Plan of Allocation.

4 **IT IS SO ORDERED.**

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6 Dated: May 27, 2016

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8 Honorable Yvonne Gonzalez Rogers
9 United States District Judge
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